

CHRISTOPHER J. BORDERS (SBN 135901)  
CASEY A. HATTON (SBN 246081)  
HINSHAW & CULBERTSON LLP  
One California Street  
18th Floor  
San Francisco, CA 94111  
Telephone: 415-362-6000  
Facsimile: 415-834-9070

Attorneys for Plaintiff  
FIREMAN'S FUND INSURANCE COMPANY &  
INTERSTATE FIRE & CASUALTY COMPANY

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO/OAKLAND DIVISION**

FIREMAN'S FUND INSURANCE  
COMPANY,

Plaintiffs,

vs.

UNITED NATIONAL INSURANCE  
COMPANY, and DOES 1 - 10

Defendants.

) Case No. CV 07-04943 JL

) **COUNTER-DEFENDANTS' ANSWER TO**  
) **COUNTER-CLAIM OF UNITED NATIONAL**  
) **INSURANCE COMPANY**

) Complaint Filed: August 21, 2007

) Counterclaim Filed: October 1, 2007

UNITED NATIONAL INSURANCE  
COMPANY,

Counterclaimant,

vs.

FIREMAN'S FUND INSURANCE  
COMPANY, INTERSTATE FIRE &  
CASUALTY COMPANY and DOES 1 - 10,

Counter-Defendants.

FIREMAN'S FUND INSURANCE COMPANY ("FIREMAN'S FUND") and  
INTERSTATE FIRE & CASUALTY COMPANY ("INTERSTATE"), collectively "Counter-  
defendants," hereby answer to the counterclaimant, UNITED NATIONAL INSURANCE  
COMPANY ("UNITED NATIONAL") Counterclaim as follows:

1           1.       Counter-defendants lack sufficient knowledge, information or belief to respond to and  
2 on that basis deny each and every allegation set forth in Paragraph 1 of the Counterclaim.

3           2.       Counter-defendants admit the allegations set forth in Paragraph 2 of the  
4 Counterclaim.

5           3.       Counter-defendants admit the allegations set forth in Paragraph 3 of the  
6 Counterclaim.

7           4.       Paragraph 4 does not require a response.

8           5.       Counter-defendants lack sufficient knowledge, information or belief to respond to and  
9 on that basis deny each and every allegation set forth in Paragraph 5 of the Counterclaim.

10          6.       Counter-defendants lack sufficient knowledge, information or belief to respond to and  
11 on that basis deny each and every allegation set forth in Paragraph 6 of the Counterclaim.

12          7.       Counter-defendants admit the allegations set forth in Paragraph 7 or the  
13 Counterclaim.

14          8.       Counter-defendants admit the allegations set forth in Paragraph 8 or the  
15 Counterclaim.

16          9.       Counter-defendants admit the allegations set forth in Paragraph 9 of the  
17 Counterclaim, except to the degree that New Mexico Statute § 41-5-15 may have undergone  
18 amendments.

19          10.       Counter-defendants admit the allegations set forth in Paragraph 10 of the  
20 Counterclaim except to the degree that New Mexico Statute § 41-5-16 may have undergone  
21 amendments.

22          11.       In responding to Paragraph 11 of the Counterclaim, Counter-defendants admit that  
23 Interstate issued a policy of liability insurance, number ASC-10000204, effective for the policy  
24 period January 27, 2005 to January 27, 2006. Except as so admitted and alleged, Counter-  
25 defendants lack sufficient knowledge, information or belief to respond to and on that basis deny each  
26 and every allegation set forth in Paragraph 11 of the Counterclaim.

27          12.       Counter-defendants admit the allegations set forth in Paragraph 12 of the  
28 Counterclaim, with the exception of minor typographical errors.

1           13. In responding to Paragraph 13 of the Counterclaim, Counter-defendants admit that  
2 UNITED NATIONAL issued a professional liability insurance policy to Cirrus with a policy period  
3 of January 27, 2006 through January 26, 2007, policy number AH-0000267. Except as so admitted  
4 and alleged, Counter-defendants lack sufficient knowledge, information or belief to respond to and  
5 on that basis deny each and every allegation set forth in Paragraph 13 of the Counterclaim.

6           14. Counter-defendants admit the allegations set forth in Paragraph 14 of the  
7 Counterclaim.

8           15. In response to Paragraph 15 of the Counterclaim, Counter-defendants admit that it  
9 agreed to defend and indemnify the Insured in the Underlying action pursuant to the terms and  
10 provisions of its policy and subject to a strict reservation of its right to withdraw from defense and  
11 seek reimbursement should it discover that the policy did not provide coverage for the claim. Except  
12 as so admitted and alleged, Counter-defendants deny each and every allegation set forth in Paragraph  
13 15 of the Counterclaim.

14                   **First Claim for Declaratory Judgment—Duty to Defend**

15           16. Counter-defendants incorporate each and every response contained in Paragraphs 1  
16 through 15 of this Answer and incorporate such by reference as though fully set forth herein.

17           17. Paragraph 16 does not require a response.

18           18. In response to Paragraph 17 of the Counterclaim, Counter-defendants admit that an  
19 actual controversy of a justiciable nature now exists between Counter-defendants and UNITED  
20 NATIONAL concerning the obligations owed by UNITED NATIONAL to reimburse Counter-  
21 defendants for the defense costs incurred by Counter-defendants for the defense of the parties'  
22 mutual Insured in the Underlying Action. Counter-defendants further admit that they seek a  
23 declaration that, under the terms, definitions, conditions, and exclusions of the policies issued by  
24 UNITED NATIONAL to the Insured, UNITED NATIONAL had an ongoing duty to defend the  
25 Insured with respect to the claims asserted against it pursuant to the Underlying Action, and now has  
26 an obligation to reimburse Counter-defendants a share of the defense costs incurred by Counter-  
27 defendants in defense of the mutual insured. Except as so admitted and alleged, Counter-defendants  
28 deny each and every allegation set forth in Paragraph 17 of the Counterclaim.

**Second Claim for Declaratory Judgment—Duty to Indemnify**

19. Counter-defendants incorporate each and every response contained in Paragraphs 1 through 18 of this Answer and incorporate such by reference as though fully set forth herein

20. Paragraph 18 does not require a response.

21. In response to Paragraph 19 of the Counterclaim, Counter-defendants admit that an actual controversy of a justiciable nature now exists between Counter-defendants and UNITED NATIONAL concerning the obligations owed by UNITED NATIONAL to indemnify the parties' mutual Insured for the settlement reached on behalf of the Insured in the Underlying Action. Counter-defendants further admit that Counter-defendants seek a declaration that, under the terms, definitions, conditions, and exclusions of the policies issued by UNITED NATIONAL to the Insured, UNITED NATIONAL had an ongoing duty to indemnify the Insured with respect to the claims asserted against it in the Underlying Action, and has an obligation to reimburse Counter-defendants a share of the indemnity expenses incurred in defense of the mutual Insured. Except as so admitted and alleged, Counter-defendants deny each and every allegation set forth in Paragraph 19 of the Counterclaim.

**AFFIRMATIVE DEFENSES**

22. As separate affirmative defenses to the Cross-Complaint, Counter-defendants allege,

23. UNITED NATIONAL'S Counterclaim fails to state facts sufficient to constitute a cause of action against Counter-defendants.

24. UNITED NATIONAL'S Counterclaim is barred, in whole or in part, by the terms, conditions and exclusions of the Counter-defendants policy.

25. UNITED NATIONAL'S Counterclaim is barred, in whole or in part, by the terms conditions and exclusions of the UNITED NATIONAL policy.

26. Counter-defendants are informed and believe, and thereon allege, that each cause of action alleged in the Counterclaim is barred, in whole or in part, by the applicable statute of limitations, including but not limited to Cal. Civil Code § 1783, Cal. Code of Civil Procedure §§ 337, 338, 339 and 343, and all other applicable statutes of limitation, whether under State or federal law.

1 27. UNITED NATIONAL is not entitled to recovery to the extent that its claims are  
2 barred by the doctrine of unclean hands.

3 28. UNITED NATIONAL is not entitled to recovery to the extent that its claims are  
4 barred by the doctrine of laches.

5 29. UNITED NATIONAL's claims are barred in whole or in part to the extent that  
6 UNITED NATIONAL has expressly or impliedly waived its right, if any, to recover any relief  
7 whatsoever from Counter-defendants.

8 30. UNITED NATIONAL's claims are barred in whole or in part to the extent that it  
9 consented to the conduct about which it now complains.

10 31. Counter-defendants reserve the right to assert additional affirmative defenses which  
11 may be available pursuant to further investigation and discovery.

12 WHEREFORE, Counter-defendants pray for judgment against UNITED NATIONAL on the  
13 Counterclaims as follows:

14 A. That UNITED NATIONAL take nothing by reason of its Counterclaim;

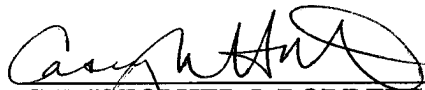
15 B. For a determination that Counter-defendants have no obligation to pay any sum or  
16 sums on account of or based on matters referenced in the Complaint;

17 C. For costs of suit; and,

18 D. For such other and further relief in favor of Counter-defendants that the Court may  
19 deem just and proper.

20 DATED: 12/2/07

HINSHAW & CULBERTSON LLP

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22 CHRISTOPHER J. BORDERS

23 CASEY A. HATTON

24 Attorneys for Plaintiff

25 FIREMAN'S FUND INSURANCE COMPANY &  
26 INTERSTATE FIRE & CASUALTY COMPANY

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